

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLIE PENA,

Plaintiff,

v.

11-CV-01102 GBW/WDS

SCRIP, INC. d/b/a MASSAGE WAREHOUSE,

Defendants.

ORDER ON DISCOVERY MOTIONS

This matter comes before the Court on Defendant Scrip, Inc.'s Motion for Extension to File Expert Witness Report of Jon M. Crate (Doc. No. 25), Plaintiff's Motion to Strike Defendant's Expert Witnesses (Doc. No. 27) and Defendant's Motion to Extend Discovery Deadline (Doc. No. 29). All the motions concern late production of reports of Defendant's experts. Apparently, the only expert witness still at issue is Jon Crate as Dr. Buchanan has been withdrawn. The facts are adequately set out in the motions.

It appears to the Court that the parties were cooperating to some extent to schedule the delivery of reports and the taking of expert depositions. For reasons not clear to the Court the cooperation broke down and both sides filed the above motions, Defendant requesting more time and the Plaintiff seeking to strike the expert. The Court encourages counsel to cooperate in the handling of all aspects of discovery. When the cooperation breaks down, for whatever reason, one side should not be allowed to take advantage of the other, merely because it currently sits on the strict side of the rules. Here there is no mystery as to who Mr. Crate was. Both parties knew his report would be late. The report and deposition were to be forthcoming shortly after the filing of these motions. The Court finds no prejudice to the Plaintiff in allowing an extension of discovery

for the purpose of finishing discovery as to Mr. Crate. The parties should confer and cooperate to accomplish this as soon as possible so as to not affect the existing trial date.

IT IS THEREFORE ORDERED that Defendant Scrip, Inc.'s Motion for Extension to File Expert Witness Report of Jon M. Crate (Doc. No. 25) is granted, Plaintiff's Motion to Strike Defendant's Expert Witnesses (Doc. No. 27) is denied, and Defendant's Motion to Extend Discovery Deadline (Doc. No. 29) is granted. Should counsel be unable to agree on appropriate dates to accomplish the above, they should immediately contact the Court and a telephonic hearing will be held to set all necessary deadlines.



W. Daniel Schneider
United States Magistrate Judge